

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DEXTER MURRAY,

Plaintiff,

-v-

PATRICIA MIDDLETON, NEW YORK CITY  
HOUSING AUTHORITY, and THE CITY OF  
NEW YORK,

Defendants.  
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19 Civ. 1959 (PAE) (SLC)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

This case was referred to the Hon. Sarah L. Cave, United States Magistrate Judge, for general pretrial management, Dkt. 14, and subsequently to resolve the motions to dismiss filed by defendants New York City Housing Authority (“NYCHA”) and the City of New York (the “City”), *see* Dkt. 24. Before the Court is Judge Cave’s July 9, 2020 Amended Report and Recommendation,<sup>1</sup> Dkt. 33 (“Amended Report”), recommending that the Court: (1) grant NYCHA’s motion to dismiss, and dismiss the claims against it with prejudice; (2) grant the City’s motion to dismiss, and dismiss the claims against it with prejudice; and (3) grant Murray until August 10, 2020, to notify the Court if he intends to pursue his claims against defendant Middleton, who has not yet been served and, failing an affirmative response from Murray, dismiss the claims against Middleton without prejudice. *Id.* at 20. The Court incorporates by

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<sup>1</sup> On June 4, 2020, Judge Cave ordered Murray to respond to the motions to dismiss by June 30, 2020. Dkt. 30. On July 8, 2020, after Murray failed to timely respond, Judge Cave issued a Report and Recommendation. Dkt. 32. Murray’s response was filed the same day. Dkt. 31. Judge Cave thereafter issued an Amended Report and Recommendation that addresses Murray’s response. *See* Amended Report at 5–6. For avoidance of doubt, the Court here considers and adopts Judge Cave’s Amended Report.

reference the summary of the facts provided in the Amended Report. For the following reasons, the Court adopts Judge Cave's recommendations in their entirety.

### DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at \*2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at \*4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).


As no party has submitted objections to the Amended Report, review for clear error is appropriate. Careful review of Judge Cave's thorough and well-reasoned Amended Report reveals no facial error in its conclusions; the Amended Report is therefore adopted in its entirety. The Amended Report explicitly states that "[t]he parties shall have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file any objections" and that "[f]ailure to object within fourteen (14) days will result in a waiver of objections and will preclude appellate review." Report at 21. On July 9, 2020, the Amended Report was mailed to plaintiff at his address of record. *See* Dkt. 33. More than 17 days have passed since Murray was served with the Amended Report. *See* Federal Rule of Civil Procedure 6(d) (allowing three additional days when service is made by mail). Murray's failure to object therefore operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

### CONCLUSION

For the foregoing reasons, NYCHA's motion to dismiss, Dkt. 22, is granted in its entirety and the claims against NYCHA are dismissed with prejudice. In addition, the City's motion to dismiss, Dkt. 25, is granted in its entirety, and the claims against the City are dismissed with prejudice. Finally, Murray is directed to inform the Court in writing, by August 10, 2020, whether he intends to pursue his claim against defendant Middleton. If the Court has not received an affirmative response from Murray by that date, the Court will promptly dismiss the claims against Middleton without prejudice.

The Clerk of Court is respectfully directed to terminate the motions pending at dockets 22 and 25. The Clerk of Court is further directed to mail a copy of this Order to Murray.

SO ORDERED.

  
Paul A. Engelmayer  
United States District Judge

Dated: July 29, 2020  
New York, New York